

# Exhibit A

**CO-LEAD CLASS COUNSEL’S REPLY MEMORANDUM OF LAW**  
**IN FURTHER SUPPORT OF MOTION TO STRIKE**  
**THE LATE-FILED OBJECTION OF**  
**CURTIS L. ANDERSON**

Mr. Anderson contends that Co-Lead Class Counsel’s “first mistake is to request inappropriate relief.” ECF No. 6255 at 2. This argument is quickly dispatched. In *in re Diet Drugs*, then Chief-Judge Bechtle granted a motion to strike objections to the settlement

agreement in that litigation. *See In re Diet Drugs*, MDL No. 1203, Pretrial Order # 1435, Sept. 21, 2000.<sup>1</sup> Co-Lead Class Counsel’s procedural route is correct, and the Court has the discretion to grant this motion.

In his opposition to the motion to strike, Mr. Anderson’s given reason for being late – that the requirements for registering a class member’s objections are “burdensome” – rings false.<sup>2</sup> The procedure is straightforward, and he offers no explanation as to why the other objectors – some *pro se* – were able to formulate timely objections. His excuse for the late filing is the objection itself – that he “only recently learned that the class notice does not accurately summarize the actual settlement” (ECF No. 6248 at 1) – is similarly unpersuasive. The notice and the Settlement Agreement have been available to class members for months, and have been the subject of extensive media coverage and analysis.

Mr. Anderson argues that Co-Lead Class Counsel have a “desire to silence one of the very players they are duty bound to represent.” ECF No. 6255 at 1. This argument is specious. Co-Lead Class Counsel have not moved to strike a single timely-filed objection. Co-Lead Class Counsel merely request that the Court enforce the scheduling order in this case which has been in

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<sup>1</sup> The following documents from *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation*, MDL No. 1203, are attached as Exhibits to this brief:

Exhibit 1: American Home Products Corporations’ Motion to Strike Objections of Rachel Mares, Jane Scuteri, and Leonard Corbin, dated Aug. 28, 2000.

Exhibit 2: Class Counsel’s Joinder in Motion to Strike Objections of Mares, Scuteri, and Corbin, dated Aug. 29, 2000.

Exhibit 3: Pretrial Order # 1435, dated Sept. 21, 2000, granting Motion to Strike Objections of Mares, Scuteri, and Corbin.

<sup>2</sup> Mr. Anderson contends that his only “‘crime’ was missing an arbitrary deadline.” ECF No. 6255 at 2. Setting aside the fact that every other objector filed his/her objection on time, this argument suggests that the Court’s deadlines are unimportant and can be missed without consequence, and that a settlement involving a class estimated at 20,000 members can be effectively administered without a set schedule.

effect for months, to ensure the timely and efficient administration of the settlement process. *See* ECF No. 6084 (July 7, 2014 Preliminary Approval Order).

Mr. Anderson contends that “an objector’s ability to raise awareness of a settlement’s negative consequences is critical to fulfilling the courts’ mandate.” *Id.* But Mr. Anderson, through his counsel, brings absolutely nothing new to the group of already filed objections. In fact, as Plaintiffs note in their motion, Mr. Anderson’s objection is completely derivative of earlier filings. ECF No. 6253-1.

### **III. CONCLUSION**

In conclusion, Co-Lead Class Counsel submit that their motion to strike this late-filed objection should be granted.

Dated: October 27, 2014

Respectfully submitted,  
/s/ Christopher A. Seeger  
Christopher A. Seeger  
SEEGER WEISS LLP  
77 Water Street  
New York, NY 10005  
Phone: (212) 584-0700  
Fax: (212) 584-0799  
cseeger@seegerweiss.com

#### **Co-Lead Class Counsel**

Sol Weiss  
ANAPOL SCHWARTZ  
1710 Spruce Street  
Philadelphia, PA 19103  
Phone: (215) 735-1130  
Fax: (215) 735-2024  
sweiss@anapolschwartz.com

#### **Co-Lead Class Counsel**

**CERTIFICATE OF SERVICE**

I, Christopher A. Seeger, hereby certify that on the 27th day of October 2014, I electronically transmitted a true and correct copy of the foregoing document to the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all attorneys of record who are ECF registrants.

/s/Christopher A. Seeger  
Christopher A. Seeger

# Exhibit 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS  
(PHENTERMINE/FENFLURAMINE/  
DEXFENFLURAMINE) PRODUCTS  
LIABILITY LITIGATION

MDL No. 1203

SHEILA BROWN, et al. v. AMERICAN  
HOME PRODUCTS CORPORATION

CIVIL ACTION No. 99-20593

**AMERICAN HOME PRODUCTS CORPORATION'S  
MOTION TO STRIKE OBJECTIONS OF  
RACHEL MARES, JANE SCUTERI, AND LEONARD CORBIN**

**FILED**  
AUG 26 2000  
MICHAEL E. KUNZ, Clerk  
By st Dep. Clerk

Defendant American Home Products Corporation ("AHP") hereby moves to strike objections to the Nationwide Class Action Settlement Agreement ("the Settlement Agreement") filed by Rachel Mares, Jane Scuteri, and Leonard Corbin.<sup>1</sup> Each of these purported objectors lacks standing to object because he or she opted out of the Settlement Agreement. Accordingly, this Court should strike their objections.

**I. FACTUAL BACKGROUND**

On November 19, 1999, AHP and the plaintiffs in the above-captioned action entered into the Settlement Agreement. Pursuant to Pretrial Order 997, the parties to the Settlement Agreement distributed to class members a notice packet, which included

<sup>1</sup> Rachel Mares is represented by Jerry Alexander of Alexander & Associates. Jane Scuteri and Leonard Corbin are represented by Paul J. Napoli of Napoli, Kaiser & Bern.

certain registration forms. *See* Settlement Agreement, Exs. 6, 9, 21, 22. The notice packet informed class members of their right to opt out of the Settlement Agreement by executing an “Orange Form” by March 30, 2000. *See id.* at Exs. 12 & 13.

Ms. Mares, Ms. Scuteri, and Mr. Corbin each timely executed an Orange Form. *See* Attachments A, B, and C. Each of these individuals subsequently filed an objection to the Settlement Agreement. *See* Attachments D and E.

## II. LEGAL ARGUMENT

A class member who opts out of a settlement agreement does not have standing to object to that settlement. *See Gilbert v. Prudential-Bache Sec.*, Civ. A. No. 83-1513, 1987 WL 6884, at \*1 (E.D. Pa. Feb. 18, 1987) (noting that objector “plainly lacks standing to object, since he opted out of the class”);<sup>2</sup> *see also* PTO 1283 (denying motion of Joseph Petito and Terry Stubbs to intervene for the limited purpose of objecting because “[m]ovants have opted out of the settlement in this action and thus have no standing to assert an objection.”).

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<sup>2</sup> *See also In re Synthroid Marketing Litig.*, No. 97 C 6017, 2000 WL 1100403, at \*1 (N.D. Ill. Aug. 7, 2000) (parties “that opted out lack standing to object”); *Martens v. Smith Barney, Inc.*, 190 F.R.D. 134, 138 (S.D.N.Y. 1999) (class members who opted out of the settlement were not permitted to raise objections at fairness hearing); *Turner v. Beneficial Corp.*, 67 F. Supp.2d 1325, 1329-30 (M.D. Ala. 1999) (“Class members [have] an incentive to voice their objections,” while those who “are outside the definition of the class or have opted out, are on a different footing.”); *In re Financial Partners Class Action Litig.*, No. 82 C 5910, 1987 WL 20150, at \*1 (N.D. Ill. Nov. 19, 1987) (“[T]he Ryans lack standing to object to the present [attorneys’ fees] petition because they opted out of the class and pursued an independent course of action . . . .”); *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 753 (S.D.N.Y. 1985) (objectors who opted out of settlement “no longer have standing to challenge the settlement and their objection is dismissed.”).



Ms. Mares, Ms. Scuteri, and Mr. Corbin executed and filed Orange Forms, thereby exercising their right to opt out of the Settlement and pursue private litigation against AHP. *See* Settlement Agreement at § IV.D.2.b & Ex. 6. Accordingly, they have no standing to object to the Settlement Agreement. *See Gilbert*, 1987 WL 6884, at \*1; PTO 1283.

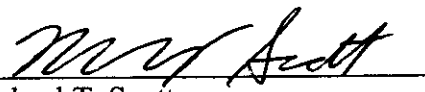
### III. CONCLUSION

For the foregoing reasons, this Court should grant AHP's motion to strike the objections filed by Rachel Mares, Jane Scuteri, and Leonard Corbin.

Respectfully submitted,

Peter L. Zimroth  
ARNOLD & PORTER  
399 Park Avenue  
New York, New York 10022  
(212) 715-1000

Daniel S. Pariser  
ARNOLD & PORTER  
555 Twelfth Street  
Washington, D.C. 20004  
(202) 942-5000

  
Michael T. Scott  
REED SMITH SHAW & MCCLAY LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103  
(215) 851-8100

Attorneys for Defendant  
American Home Products Corporation

Dated: August 28, 2000



ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

AUG 25 2000 13:31 FR

TO 12025425999

P.02

**ORANGE FORM #1****Diet Drug Settlement With  
American Home Products Corporation**

This ORANGE FORM may be used by any person who wants to exercise initial Opt-Out Rights and be excluded from the Settlement with American Home Products Corporation. If you want to choose the accelerated implementation option ("AIO") do not complete this form. Complete the PINK FORM instead.

If you use this form to exercise your initial Opt-Out Right, this form must be completed in its entirety and returned to the Claims Administrators and to American Home Products Corporation by the time provided in the Official Court Notice of Settlement.

1. State your name, address and telephone number.

Rachel Aileen Mares  
(First Name) (Middle Initial) (Last Name)  
16509 South 27th Street  
(Street Address)  
Omaha, Nebraska 68107  
(City) (State) (Zip Code)  
402.932-3382 402.932-3382  
(Daytime Phone Number & Area Code) (Evening Phone Number & Area Code)

2. If you have a lawyer in connection with the Diet Drug Litigation, list his/her name, office address, telephone number, fax number, and E-mail address, if any:

Alexander & Associates, P.C.  
(Law Firm Name)  
Mr. Jerry Alexander  
(Attorney's Name)  
619 North 90th Street  
(Street Address)  
Omaha Nebraska 68114  
(City) (State) (Zip Code)

Remove label from mailing envelope  
and affix here.

Please return this form to:  
Diet Drug Settlement  
P.O. Box 7939  
Philadelphia, PA 19101

AUG 25 2000 13:31 FR

TO 12029425999

P.03

402, 390 - 9339

(Daytime Phone Number &amp; Area Code)

402, 390 - 9383

(Fax Number)

jerry@alexanderlegal.com

(E-mail Address, if any)

3. If you have a lawsuit presently filed against American Home Products Corporation arising from the use of the diet drugs Pondimin® and/or Redux®, list the caption (title) of the lawsuit, the court it is filed in, and the docket or civil action number:

(Caption/Title of lawsuit)

(Docket/Civil Action Number of lawsuit)

4. (Answering this question is optional.) If you believe that you have an adverse medical condition related to the use of Pondimin® and/or Redux®, please briefly describe your condition below:

5. **CERTIFICATION:** I have had an opportunity to read the *Official Court Notice* transmitted to Class Members in connection with the nationwide Class Action Settlement with American Home Products Corporation and to consult with physicians and attorneys concerning the terms and conditions of the proposed Class Action Settlement. **HAVING HAD THAT OPPORTUNITY, I HEREBY KNOWINGLY AND PERMANENTLY RELINQUISH, WAIVE AND GIVE UP ALL OF THE RIGHTS WHICH I WOULD OTHERWISE HAVE HAD AS A CLASS MEMBER UNDER THE SETTLEMENT AGREEMENT WITH AMERICAN HOME PRODUCTS CORPORATION AND I AFFIRMATIVELY AND FOREVER OPT-OUT OF THE CLASS WITH FULL KNOWLEDGE OF THE LEGAL, FACTUAL AND MEDICAL CONSEQUENCES OF MY ACTIONS.**

(Date)

3/17/00

(Signature)

Rachael M. Miller

Return this form to both the Claims Administrators and American Home Products Corporation at the following addresses:

Claims Administrators  
Diet Drug Settlement  
P.O. Box 7939  
Philadelphia, PA 19101

American Home Products Corporation  
c/o Michael T. Scott, Esq.  
MDL Liaison Counsel for AHP  
Reed, Smith, Shaw & McClay  
One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103



08/28/00 09:48 FAX 202 942 5209

ARNOLD &amp; PORTER

002/003

AUG 25 2000 13:32 FR

TO 12029425999

P.06

## DIET DRUG SETTLEMENT WITH AMERICAN HOME PRODUCTS CORPORATION

## ORANGE FORM

THIS FORM MAY BE USED BY ANY PERSON WHO WANTS TO  
EXERCISE INITIAL OPT-OUT RIGHTS AND BE EXCLUDED FROM  
THE SETTLEMENT WITH AMERICAN HOME PRODUCTS CORPORATION.

IF YOU WANT TO CHOOSE  
THE ACCELERATED IMPLEMENTATION OPTION ("AIO"),  
DO NOT COMPLETE THIS FORM.  
COMPLETE THE PINK FORM INSTEAD.

IF YOU USE THIS FORM TO EXERCISE YOUR INITIAL OPT-OUT RIGHT,  
THIS FORM MUST BE COMPLETED IN ITS ENTIRETY AND RETURNED  
TO THE CLAIMS ADMINISTRATOR(S) AND  
TO AMERICAN HOME PRODUCTS CORPORATION BY  
THE TIME PROVIDED IN THE OFFICIAL COURT NOTICE OF SETTLEMENT.

1. State your name, address and telephone number:

JANE Seufert  
NAME

4005 Brooklyn Avenue  
ADDRESS

Seaford  
CITY

NY  
STATE

11783  
ZIP CODE

DAYTIME TELEPHONE NUMBER (WITH AREA CODE)

EVENING TELEPHONE NUMBER (WITH AREA CODE)

2. If you have a lawyer in connection with the Diet Drug Litigation, list his/her name, office address, telephone number, fax number, an E-mail address, if any:

NAPOLI KAISER & BERN, LLP  
NAME

115 Broadway - 12th Floor  
OFFICE ADDRESS

New York  
CITY

New York  
STATE

10006  
ZIP CODE

(212) 267-3700  
TELEPHONE NUMBER (WITH AREA CODE)

(212) 216-8435  
FAX NUMBER

nanoli@napolikaiser.com  
E-MAIL ADDRESS

3. If you have a lawsuit presently filed against American Home Products Corporation arising from the use of the diet drugs Pondimin and/or Redux, list the caption (title) of the lawsuit and the docket or civil action number.

et al. v. AHP et al.  
[CAPTION/TITLE OF THE LAWSUIT]

Supreme

[DOCKET/CIVIL ACTION NUMBER OF LAWSUIT]

AUG 25 2000 13:32 FR

TO 12029425999

P.07

4. (Answering this question is optional.) If you believe that you have an adverse medical condition related to the use of Pondamin and/or Redux, please briefly describe your condition below.

N/A

5. **CERTIFICATION:** I have had an opportunity to read the Official Court Notice transmitted to Class Members in connection with the nationwide Class Action Settlement with American Home Products Corporation and to consult with physicians and attorneys concerning the terms and conditions of the proposed Class Action Settlement. **HAVING HAD THAT OPPORTUNITY, I HEREBY KNOWINGLY AND PERMANENTLY RELINQUISH, WAIVE AND GIVE UP ALL RIGHTS WHICH I WOULD OTHERWISE HAVE HAD AS A CLASS MEMBER UNDER THE SETTLEMENT AGREEMENT WITH AMERICAN HOME PRODUCTS CORPORATION AND I AFFIRMATIVELY AND FOREVER OPT OUT OF THE CLASS WITH FULL KNOWLEDGE OF THE LEGAL, FACTUAL AND MEDICAL CONSEQUENCES OF MY ACTIONS.**

3-27-00  
DATE

*John M. Scuderi*  
SIGNATURE

RETURN THIS FORM TO BOTH THE CLAIMS ADMINISTRATOR(S) AND AMERICAN HOME PRODUCTS CORPORATION AT THE FOLLOWING ADDRESSES:

SETTLEMENT ADMINISTRATOR(S):

AMERICAN HOME PRODUCTS CORPORATION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





AUG 25 2000 13:32 FR

TD 12029425999

P.08

## DIET DRUG SETTLEMENT WITH AMERICAN HOME PRODUCTS CORPORATION

## ORANGE FORM

THIS FORM MAY BE USED BY ANY PERSON WHO WANTS TO  
EXERCISE INITIAL OPT-OUT RIGHTS AND BE EXCLUDED FROM  
THE SETTLEMENT WITH AMERICAN HOME PRODUCTS CORPORATION.

IF YOU WANT TO CHOOSE  
THE ACCELERATED IMPLEMENTATION OPTION ("AIO"),  
DO NOT COMPLETE THIS FORM.  
COMPLETE THE PINK FORM INSTEAD:

IF YOU USE THIS FORM TO EXERCISE YOUR INITIAL OPT-OUT RIGHT,  
THIS FORM MUST BE COMPLETED IN ITS ENTIRETY AND RETURNED  
TO THE CLAIMS ADMINISTRATOR(S) AND  
TO AMERICAN HOME PRODUCTS CORPORATION BY  
THE TIME PROVIDED IN THE OFFICIAL COURT NOTICE OF SETTLEMENT.

1. State your name, address and telephone number:

Leonard Corbin  
NAME

5C Lakeview Manor (Is this old address?) 1700 NEW Combien RD- 5-C

ADDRESS

Milville NJ 08332  
CITY STATE ZIP CODE

(609) 785-1300 (856) Area Code Change  
DAYTIME TELEPHONE NUMBER (WITH AREA CODE)

(609) 825-9388 (856)  
EVENING TELEPHONE NUMBER (WITH AREA CODE)

08/28/00 09:49 FAX 202 942 5209

ARNOLD &amp; PORTER

003/004

AUG 25 2000 13:33 FR

TO 12829425999

P.09

Page 1

## ORANGE FORM

2. If you have a lawyer in connection with the Diet Drug Litigation, list his/her name, office address, telephone number, fax number, an E-mail address, if any:

NAPOLI KAISER & BERN, LLP  
NAME

115 Broadway-- 12th Floor  
OFFICE ADDRESS

New York New York 10006  
CITY STATE ZIP CODE

(212) 267-3700  
TELEPHONE NUMBER (WITH AREA CODE)

(212) 216-9435  
FAX NUMBER

nnapoli@napolikaiser.com  
E-MAIL ADDRESS

3. If you have a lawsuit presently filed against American Home Products Corporation arising from the use of the diet drugs Pondimin and/or Redux, list the caption (title) of the lawsuit and the docket or civil action number:

Leonard Corbin et al. v. AHP, et al  
[CAPTION/TITLE OF THE LAWSUIT]

NY-Kings Supreme 31283/99  
[DOCKET/CIVIL ACTION NUMBER OF LAWSUIT]

4. (Answering this question is optional.) If you believe that you have an adverse medical condition related to the use of Pondimin and/or Redux, please briefly describe your condition below.

N/A

AUG 25 2000 13:33 FR

TO 12029425999

P.10

Page 2

## ORANGE FORM

5. **CERTIFICATION:** I have had an opportunity to read the Official Court Notice transmitted to Class Members in connection with the nationwide Class Action Settlement with American Home Products Corporation and to consult with physicians and attorneys concerning the terms and conditions of the proposed Class Action Settlement. **HAVING HAD THAT OPPORTUNITY, I HEREBY KNOWINGLY AND PERMANENTLY RELINQUISH, WAIVE AND GIVE UP ALL RIGHTS WHICH I WOULD OTHERWISE HAVE HAD AS A CLASS MEMBER UNDER THE SETTLEMENT AGREEMENT WITH AMERICAN HOME PRODUCTS CORPORATION AND I AFFIRMATIVELY AND FOREVER OPT OUT OF THE CLASS WITH FULL KNOWLEDGE OF THE LEGAL, FACTUAL AND MEDICAL CONSEQUENCES OF MY ACTIONS.**

Dec 17, 1999  
DATE

Leonard Corbin  
SIGNATURE

**RETURN THIS FORM TO BOTH THE CLAIMS ADMINISTRATOR(S) AND AMERICAN HOME PRODUCTS CORPORATION AT THE FOLLOWING ADDRESSES:**

SETTLEMENT ADMINISTRATOR(S):

AMERICAN HOME PRODUCTS CORPORATION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE/  
FENFLURAMINE/DEXFENFLURAMINE  
PRODUCTS LIABILITY LITIGATION)

FILED

MAR 31 2000

MICHAEL E. KUNZ, Clerk  
MDL Clerk

MDL DOCKET NO. 1203

MOTION IN OPPOSITION TO THE PROPOSED  
NATIONAL SETTLEMENT ON NEUROTOXICITY CLAIMS

COMES NOW Patricia Dimari (MDL Civil Action No.: 00-20100) and Rachel Mares, on behalf of themselves and others similarly situated, and for the reasons set forth below, object to the National Settlement as being unfairly prejudicial to their respective rights to bring claims for Toxic Encephalopathy (brain damage) secondary to fenfluramine and/or dexfenfluramine use.

1. The March 30, 2000 deadline for initial Opt-Out of the Proposed National Settlement in MDL 1203, may leave thousands, if not millions, who have suffered Toxic Encephalopathy (brain damage) secondary to use of fenfluramine (Pondimin) and/or dexfenfluramine (Redux) without recourse.

By the terms of the Proposed National Settlement, individuals who fail to exercise their initial opt-out right are automatically members of the class action and subject to the Proposed Settlement. Pursuant to the Proposed Settlement, once an individual is subject to its terms, those individuals can only bring a claim against American Home Products or the other settling Defendants for heart damage. According to the Proposed Settlement, "'Settled Claims' shall mean any and all claims, including assigned claims, whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future by any or all members of the Settlement Class. . .". Accordingly, arguably all neurotoxicity claims will be waived if an individual does not exercise initial Opt-Out.

2. As drafted, the Proposed Settlement precludes individuals who do not opt-out and who have suffered brain damage caused by fenfluramine or dexfenfluramine from bringing claims for compensation, even though the nature and extent of such claims are unknown to such individuals at the present time.

3. Moreover, despite offering no compensation or other consideration for individuals who have suffered Toxic Encephalopathy, the National Settlement seeks to vitiate the right to bring such a claim in the future.

REC'D

APR - 6 2000

4. Patricia Dimari is a 36 year old individual who ingested fenfluramine for a period in excess of 5 months. Thereafter, Patricia Dimari was diagnosed with severe mitral regurgitation and heart failure. Pursuant to the terms of the settlement, Mrs. Dimari is entitled to approximately \$580,759.00 as a result of her Matrix level heart condition. Due to Mrs. Dimari's present financial condition, she would like to settle her heart damage claim for the grid amount. Unfortunately, however, Mrs. Dimari also suffers from permanent brain damage secondary to her fenfluramine use. Attached hereto and marked as Exhibit "1" is an Affidavit of her treating physician supporting the findings of Toxic Encephalopathy secondary to fenfluramine use.

5. Because the terms of the National Settlement, as drafted, seeks to preclude Mrs. Dimari and individuals similarly situated from bringing a claim for Toxic Encephalopathy if they do not Opt-Out of the National Settlement, the National Settlement, as drafted, is unfair and should not be approved by this Court.

6. Rachel Mares is a 34 year old who used fenfluramine for approximately 3 months. On February 15, 2000 she was diagnosed with Toxic Encephalopathy secondary to fenfluramine exposure. Although Mrs. Mares is not at present "FDA positive", as defined within the National Settlement, she has suffered from symptoms of shortness of breath and would like to be a class member in the event she develops a compensable claim in the future. Unfortunately, however, she must Opt-Out of the National Settlement covering heart damage so that she can pursue her brain damage claim. Attached hereto and marked as Exhibit "2" is an Affidavit of her treating physician supporting the findings of Toxic Encephalopathy secondary to fenfluramine use.

7. Because the terms of the National Settlement, as drafted, seeks to preclude Mrs. Mares and individuals similarly situated from bringing a claim for Toxic Encephalopathy if they do not Opt-Out of the National Settlement, the National Settlement, as drafted, is unfair and should not be approved by this Court.

WHEREFORE, Plaintiffs pray, on behalf of themselves and others similarly situated, that the National Settlement not be approved or that this Court enter an Order finding that claims for injuries other than heart damage, such as Toxic Encephalopathy, are not covered by the terms of the National Settlement. Plaintiffs further ask this Court for an opportunity to be heard on this motion and to present evidence on or before the Fairness Hearing scheduled for May 1, 2000 - May 5, 2000.

Respectfully Submitted,

BY: 

JERRY ALEXANDER #20819

Alexander & Associates, P.C.

619 North 90<sup>th</sup> Street

Omaha, Nebraska 68114

(402) 390-9339

Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28<sup>th</sup> day of March, 2000, a true and correct copy of the above and foregoing document was sent via Certified Mail, Return Receipt Requested to the following individual(s):

Clerk of the U.S. District Court  
United States Courthouse  
601 Market Street  
Philadelphia, PA 19106

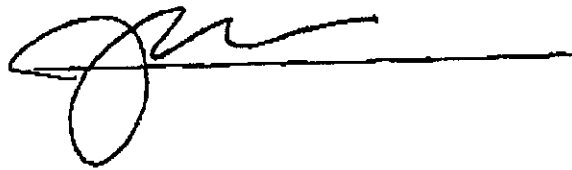
CM, RRR # Z 559 099 952

Claims Administrators  
Dier Drug Settlement  
P.O. Box 7939  
Philadelphia, PA 19101

CM, RRR # Z 559 099 953

Mr. Michael T. Scott, Esq.  
MDL Liaison Counsel for AHP  
Reed Smith Shaw & McClay  
One Liberty Place, 1650 Market Street  
Philadelphia, PA 19103

CM, RRR # Z 559 099 954



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE/  
FENFLURAMINE/DEXFENFLURAMINE  
PRODUCTS LIABILITY LITIGATION)

MDL DOCKET NO. 1203

AFFIDAVIT OF DR. RICHARD M. FLEMING

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )


Dr. Richard M. Fleming, being first duly sworn on oath, states as follows:

1. That I am a Board-Certified Internist, licensed to practice medicine in the States of Texas, Iowa and Nebraska.
2. That I am a Board-Certified Nuclear Cardiologist and I have been trained and certified in the use of positron emission tomography (PET).
3. That my practice involves weight management, the implications thereof, and preventive cardiology.
4. Patricia Dimari is a patient who was seen in my office for complications related to her heart. During my examination Mrs. Dimari provided a history of symptoms consistent with neurological abnormalities. In light of her symptoms, I ordered a nuclear brain scan (PET) which revealed evidence of toxic encephalopathy which I believe to a reasonable degree of medical certainty is secondary to Mrs. Dimaris' use of fenfluramine and/or dexfenfluramine.
5. That I am basing all of my opinions contained herein on the medical records and history provided by Mrs. Dimari.

EXHIBIT 1

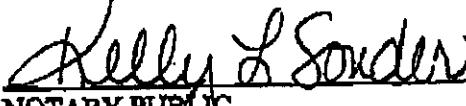


DATED this 28<sup>th</sup> day of March, 2000.  
FURTHER AFFIANT SAYETH NAUGHT.

  
Richard M. Fleming, M.D., Affiant  
The Fleming Heart & Health Institute  
9290 W. Dodge Road, Suite 204  
Omaha, Nebraska 68114  
(402) 343-0800

Subscribed and sworn to before me this 28 day of March, 2000.



  
NOTARY PUBLIC

4



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS (Phentermine/  
Fenfluramine/Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION ) MDL DOCKET NO. 1203

THIS DOCUMENT RELATES TO:

SHEILA BROWN, SHARON GADDIE,  
JOSE GADDIE, VIVIAN NAUGLE,  
QUENTIN LAYER, JOAN S. LAYER,  
JOBY JACKSON-REID and HARVEY  
E. REID, Individually and  
all others similarly situated,

Plaintiffs,

v.

AMERICAN HOME PRODUCTS  
CORPORATION,

Defendant.

CIVIL ACTION NO. 99-20593

CLASS ACTION

4/4/cc

OBJECTIONS OF JANE SCUTERI, ET AL.,  
AND REQUEST TO APPEAR THROUGH  
COUNSEL AT THE FAIRNESS HEARING

PAUL J. NAPOLI  
MARC JAY BERN  
NAPOLI, KAISER & BERN, LLP  
115 Broadway, 12th Floor  
New York, NY 10006  
(212) 267-3700  
Attorneys for Plaintiffs Jane Scuteri, et al.

Of Counsel:

KENNETH J. CHESEBRO  
1600 Massachusetts Avenue  
Cambridge, MA 02138  
(617) 661-4423

March 30, 2000

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of American Home Products Corporation's Motion to Strike Objections of Rachel Mares, Jane Scuteri, and Leonard Corbin was served on this 28th day of August, 2000, upon the following, as noted:

**VIA FACSIMILE**

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BY 31 Dep. Clerk

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\_\_\_\_\_  
Michael T. Scott

# Exhibit 2



Cy 202030  
8/29/00

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS (Phentermine/  
Fenfluramine/Dexfenfluramine)  
PRODUCTS LIABILITY LITIGATION : MDL Docket No. 1203

THIS DOCUMENT RELATES TO: :  
: :  
SHEILA BROWN, et al., :  
: :  
Plaintiffs, : CIVIL ACTION NO. 99-20593  
: :  
v. :  
: :  
AMERICAN HOME PRODUCTS CORP., :  
: :  
Defendant. :

CLASS COUNSEL'S JOINDER IN AMERICAN HOME  
PRODUCTS CORPORATION'S MOTION TO STRIKE OBJECTIONS  
OF RACHEL MARES, JANE SCUTERI AND LEONARD CORBIN

Class Counsel hereby joins in American Home Products Corporation's (AHP's) Motion to Strike Objections of Rachel Mares, Jane Scuteri and Leonard Corbin.

Each of these purported objectors opted out of the settlement and as such lack standing. Objector Rachel Mares is represented by Alexander & Associates, and Jane Scuteri and Leonard Corbin are represented by Napoli, Kaiser & Bern. Neither of objectors' counsel formally notified the Court of their clients opting out of this settlement and thus their lack of standing to pursue their objections. Ms. Mares opted out on March 17, 2000 and filed her objection on March 28, 2000. Jane Scuteri opted out on March 27, 2000 and Leonard Corbin opted out on December 17, 1999. Ms. Scuteri and Mr. Corbin filed their objections on March 30, 2000.

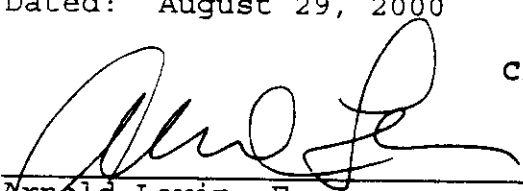
Each of these objectors lack standing at the time that their objections were filed.

For the above reasons and those specifically set forth in American Home Product's Motion, these objections should be stricken.

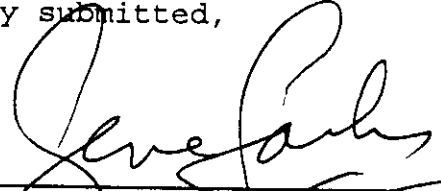
Dated: August 29, 2000

Respectfully submitted,

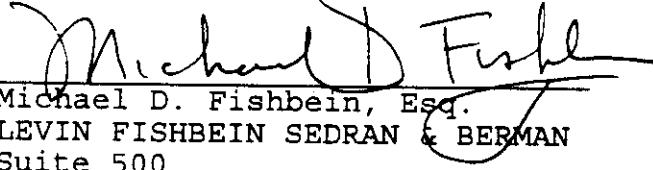
Class Counsel



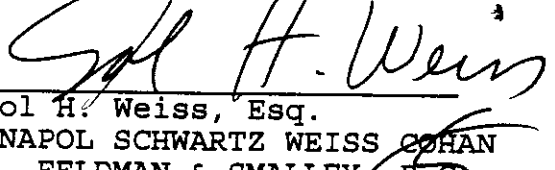
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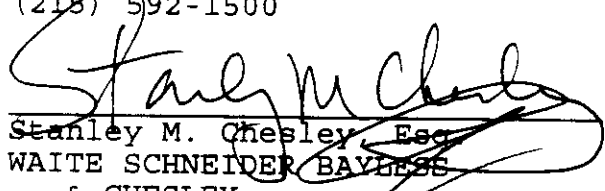
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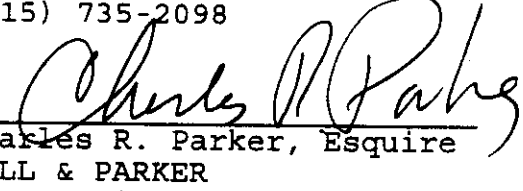
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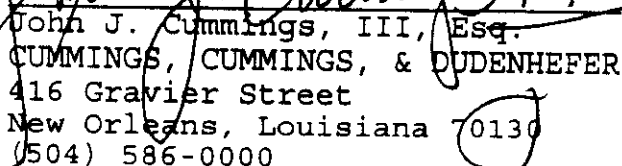
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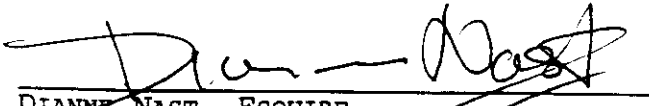
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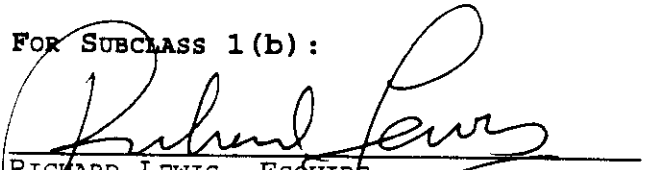
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For the Plaintiffs' Management  
Committee

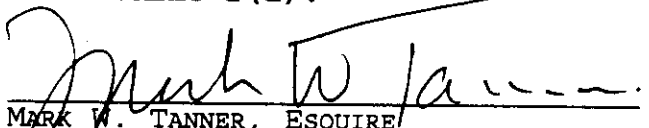
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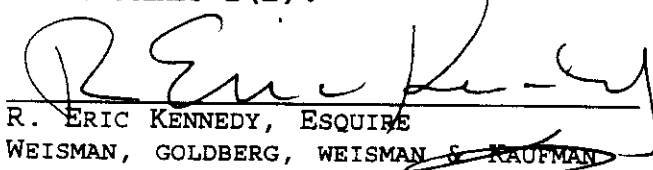
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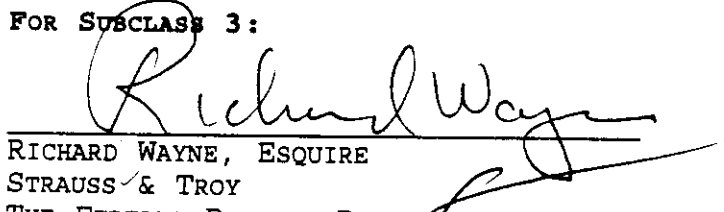
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Class Counsel's Joinder in American Home Products Corporation's Motion to Strike Objections of Rachel Mares, Jane Scuteri and Leonard Corbin was served on the following counsel on this 29th day of August, 2000 via United States First Class Mail, postage prepaid upon the following:

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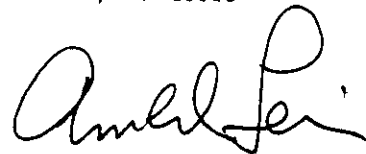
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**ARNOLD LEVIN**

# Exhibit 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE/ :  
FENFLURAMINE/DEXFENFLURAMINE :  
PRODUCTS LIABILITY LITIGATION) : MDL DOCKET NO. 1203

PRETRIAL ORDER # 1435

AND NOW, this 21<sup>st</sup> day of September, 2000, at a hearing held on  
September 20, 2000, the court ruled as follows:

1. Class Counsel's Motion to Impose Bond for Costs on Appeal Noticed By Attorney Lawrence W. Schonbrun in Brown, Civ. No. 99-20593 (Document #201908) is GRANTED.
2. Defendant's Motion to Strike Objections of Rachel Mares, Jane Scuteri, and Leonard Corbin in Brown, Civ. No. 99-20593 (Document #202024) is GRANTED.
3. Defendant's Motion to Strike Objection of John J. Seaman in Brown, Civ. No. 99-20593 (Document #202020) is GRANTED.
4. Motion to Allow Filing of Petition in Intervention of Becnel Attorneys for the Purpose of Establishing a Claim to Entitlement of Common Benefit Attorneys' Fees and Expenses in Brown, Civ. No. 99-20593 (Document #201982) and Motion to Allow Filing of Petition in Intervention of Becnel Attorneys and Motion to Allow the Filing of the Becnel Attorneys' First Supplemental Petition in Intervention (Document #202058) are DENIED.
5. Motion of Daniel E. Becnel, Jr. to Intervene in Brown, Civ. No. 99-20593 (Document #201620) is DENIED without prejudice.
6. Defendant's Motion to Dismiss the Plaintiff's Amended Complaint in Glincher, Civ. No. 99-20131 (Document #202018) is GRANTED.
7. Plaintiff's Motion to Strike Order Entered in Ohio Dismissing Count I of

Plaintiff's Complaint in Schnell, Civ. No. 00-20750 (Document #202011) is GRANTED. Count 1 of the complaint is reinstated.

8. Defendant's Motion to Enforce PTO 21 in Hazen, Civ. No. 00-20415 (Document #202026) is WITHDRAWN.

9. Plaintiff's Motion for Reconsideration of Defendant's Motion to Dismiss Interpleader Actions as Moot in Columbia Casualty Co., Civ. No. 99-20037 (Document #202019) is DENIED without prejudice.

10. Plaintiffs' New Hampshire Insurance Co., et al. motion for Reargument of Defendant Interneuron Pharmaceuticals, Inc.'s Motion to Dismiss the Interpleader Actions and to Vacate Paragraph Six of Pretrial Order #1405 (Document #202029) are DENIED.

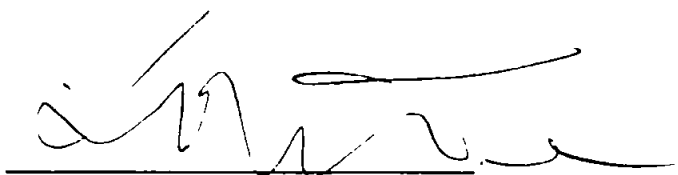
11. Defendants' Motion to Dismiss or For a More Definite Statement in Metheney, Civ. No. 00-20427 (Document #201940) is GRANTED.

12. The next status conference will be held on October 25, 2000 at 10:00 a.m. in Courtroom 17-B, 17<sup>th</sup> Floor, United States Courthouse, 601 Market Street, Philadelphia, PA 19106.

ATTEST:

or BY THE COURT

BY: \_\_\_\_\_  
Deputy Clerk

  
\_\_\_\_\_  
Judge

civ 12 (9/83)